IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9934 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NARPATSDINH ALIAS NAPO PRABHATSINH THAKORE

Versus

STATE OF GUJARAT

Appearance:

MS KRISHNA U MISHRA for Petitioner No. 1

MS MITA PANCHAL, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 15/10/2003

ORAL JUDGEMENT

1. Bsy way of this Special Civil Application, the petitioner has challenged the order dated 12.06.2003 passed by the Police Commissioner, City of Vadodara,

against him, in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "PASA Act") declaring the petitioner to be a "bootlegger" within the meaning of the PASA Act, and directing the detention of the petitioner. In pursuance of the said impugned order in this petition, the petitioner is detained in jail since 12.6.2003.

2. The grounds served upon the petitioner and as placed on record indicate that the detaining authority took into consideration two offences came to be registered against the petitioner, on 11.4.2003 and on 02.6.2003 under Sections 66(b), 65(e) and 81 of the Bombay Prohibition Act, whereby some quantity of country liquor alleged to have been seized from the petitioner. In addition to this, the detaining authority relied upon two in-camera statements as recorded by sponsoring authority on 05.6.2003 and on 6.6.2003 and verified by the detaining authority on 09.6.2003, revealing the unreported incidents occurred on 29.5.2003 and 04.6.2003. From the above material, the order impugned came to be passed against the petitioner.

3. Learned Advocate Ms.Krishna U.Krishna for the petitioner and learned AGP Ms. Mita Panchal for the respondents were heard at length. The affidavit-in-reply filed by the detaining authority and as placed on record by learned AGP is also taken into consideration.

4. Out of various contentions raised on behalf of the petitioner, and controverted by the AGP, from rival contentions, it appears that the matter can be considered and be decided on the sole ground whether from the material placed before the detaining authority, the public order was disturbed. For that, the detaining authority relied upon two crimes registered against the petitioner under the Bombay Prohibition Act. Mere fact of registration of crimes against the petitioner, as aforesaid, whereby some quantity of country liquor is seized from the petitioner, could hardly be said to be a fact or an activity prejudicial to the maintenance of public order. The detaining authority has also relied upon two in camera statements as recorded by the sponsoring authority. Out of them, one incident occurred on 29.5.2003 where the witness was passing near Nutan bank and the petitioner and his associates were noticed by him alighting bulk of country liquor from the rickhaw. On seeing the witness, the petitioner called him and gave beating on suspicion that the witness was keeping watch on him and informing the police. On refusing, the

witness was further beaten by the petitioner and his associates. The passersby gathered there but due to threat by the petitioner and his associates, the persons gathered around, were dispersed. Likewise, in the next incident, which occurred on 4th of June, 2003, while the petitioner was near Baranpura Bharti School, the petitioner approached the witness and directed him to board the rickshaw along with the petitioner for fetching country liquor because nobody else from the petitioner's group was present. At that time, the petitioner also offered remuneration for that work to the witness. On refusal by witness, the petitioner instigated and gave beating to the witness. At that time, passersby gathered around, due to threat, they were dispersed. In these circumstances, the contention of the petitioner is this is not a material to reach to the subjective satisfaction that the activities of the petitioner were prejudicial to the maintenance of the public order.

5. The nature of the activity be the same creating prejudice to the public order and law and order. The same activity might be affecting law and order as well. Therefore, it is the length, magnitude and intensity of the questionable activity of a person, is required to be judged, to find out whether his activities are prejudicial to the maintenance of public order or only law and order. It is the degree and extent of the reach of the objectionable activity upon the society, which is vital for consideration of the question whether the man has committed only a breach of law and order or has acted in the manner likely to cause disturbance to the public order. The potentiality of the Act to disturb the even tempo of life of the community makes it prejudicial to the maintenance of public order. It all depends upon the facts of the case. Considering the facts as on record, emerging from the statements recorded by the sponsoring authority, it clearly transpires that the statements reflect the individual dispute picked up by the petitioner with each of the witnesses. These are not the objectionable activities disturbing the public tranquility or society at large is affected by the activity. If the statements are taken at their face value, at the most, it can be said that, the activities are affecting the law and order can be taken care of by the ordinary law. Therefore, the subjective satisfaction of the detaining authority in this respect is vitiated because there was no material before the detaining authority to come to the conclusion that the activities of the petitioner was so objectionable as to be prejudicial to the maintenance of public order. Therefore, the order impugned in this Special Civil

Application is required to be quashed and set aside on this ground alone.

6. In the result, this Special Civil Application is allowed with no order as to costs. The order impugned in this Special Civil Application passed by the Police Commissioner, Vadodara City, on 12.06.2003 under Section 3(1) of the PASA Act against the petitioner is quashed and set aside. Petitioner is directed to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule made absolute. DS permitted.

7. The learned Advocate for the petitioner makes a statement that the petitioner is transferred to Sabarmati Jail. Office is directed to transmit the writ to Sabarmati Jail.

(J.R. Vora, J.)

p.n.nair